

ORIGINAL  
FILED  
June 7 2010  
Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA  
JUN 07 2010  
Ed Smith  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA  
CASE NO. DA 09-0659

---

C.A. GRENZ,  
Petitioner and Appellee,

-VS-

MONTANA DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION,  
Respondent and Appellant,

and JOHN AND ANGELA HEITZ,  
Respondents.

---

On Appeal from the Montana Sixteenth Judicial District Court, Garfield County  
The Honorable Gary Day, Presiding  
Garfield County District Court Cause No. DV-17-2008-2911

---

**APPELLANT, STATE OF MONTANA'S ERRATA SHEET**

---

**Appearances:**

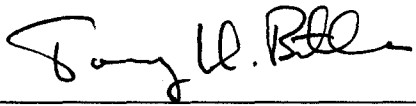
Tommy H. Butler  
Special Assistant Attorney General  
Montana DNRC  
PO Box 201601  
Helena, MT 59620  
Telephone: (406) 444-3776  
**Attorney for Respondent and  
Appellant State of Montana**

George W. Huss  
Brown & Huss, P.C.  
P.O. Box 128  
Miles City, MT 59301  
Telephone (406) 234-3054  
**Attorney for Petitioner and Appellee  
C.A. Grenz**

Mr. Casey Heitz  
Parker, Heitz, & Cosgrove, PLLC  
P.O. Box 7212  
Billings, MT 59103-7212  
**Attorney for Respondent John & Angela  
Heitz**

The Reply Brief filed by the State of Montana, Department of Natural Resources and Conservation, in the above-captioned action lacked page 11 of the brief. Enclosed is page 11 of the Appellant's Reply Brief.

DATED this 7<sup>th</sup> day of June, 2010.


By:   
Tommy H. Butler  
Special Assistant Attorney General

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing APPELLANT, STATE OF MONTANA'S ERRATA SHEET was served by mail, postage prepaid, upon the following on the 7<sup>th</sup> day of June, 2010:

Mr. George W. Huss  
Brown and Huss, P.C.  
Box 128  
Miles City, Montana 59301

Mr. Casey Heitz  
Parker, Heitz, & Cosgrove, PLLC  
P.O. Box 7212  
Billings, MT 59103-7212

  
\_\_\_\_\_

## CONCLUSION

ARM 36.25.125(3) requires a willing buyer and a willing seller for the transfer and sale of moveable improvements upon grazing leases on State trust lands. A review of the State Land Board's broad Constitutional authority over State trust lands as well as applicable legislative provisions shows that adoption of such a rule by the Land Board is not prohibited by law.

ARM 36.25.125 does not engraft additional requirements in conflict with statute. Instead, the Board's rules specify a different treatment for items that are not affixed to the land in accordance with this Court's ruling in Montrust I that Article X, Section 11 of the 1972 Montana Constitution prohibits moveable improvements from remaining upon State trust lands after the termination of the lease without further compensation. If moveable improvements cannot constitutionally remain upon the trust lands without further payment, they certainly cannot remain on the trust land unless they are sought to be purchased by the new lessee. The administrative record shows Mr. Grenz has obtained no right to keep his moveable improvements upon these State trust lands. The District Court erred by invalidating ARM 36.25.125(3).

In adopting ARM 36.25.125 the State Board of Land Commissioners has exercised its discretion, and adopted administrative rules to implement the transfer and valuation of moveable improvements from a former lessee to a new lessee. It